

1 THE HONORABLE ROBERT S. LASNIK
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

LENA ARMAS and ANDREA BLUM,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

No. 2:22-cv-01726-RSL

REALPAGE, INC., GREYSTAR REAL
ESTATE PARTNERS, LLC, CH REAL
ESTATE SERVICES, LLC, LINCOLN
PROPERTY CO., FPI MANAGEMENT, INC.,
MID-AMERICA APARTMENT
COMMUNITIES, INC., AVENUE5
RESIDENTIAL, LLC, EQUITY
RESIDENTIAL, ESSEX MANAGEMENT
CORPORATION, AVALONBAY
COMMUNITIES, INC., CAMDEN PROPERTY
TRUST, ESSEX PROPERTY TRUST, INC.,
THRIVE COMMUNITIES MANAGEMENT,
LLC, SECURITY PROPERTIES INC., B/T
WASHINGTON, LLC d/b/a BLANTON
TURNER, INDEPENDENCE REALTY
TRUST, INC., CUSHMAN & WAKEFIELD,
INC., BH MANAGEMENT SERVICES, LLC,
and UDR, INC.,

Defendants.

STATUS REPORT

Plaintiffs and Defendants¹ in the above-captioned action respectfully submit this status report pursuant to the Court's orders of December 27, 2022, December 29, 2022, and January 9, 2023, which directed the parties to meet and confer and file a status report. *See Armas v.*

¹ For purposes of this status report, "Defendants" are only a subset of the defendants named in the various actions, and are limited to those that have signed this status report. Notably, despite their effort to consolidate, Plaintiffs have not served a single defendant in eight of the 13 cases they have filed.

1 *RealPage, Inc., et al.*, 2:22-cv-01726-RSL (W.D. Wash.), ECF Nos. 54, 56, 69. Pursuant to the
 2 Court's orders, Plaintiffs and Defendants met and conferred on January 13, 2023.

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4 **Plaintiffs' Position.** The Parties had previously filed stipulated motions in *Morgan* and
 5 *Armas* requesting that the Court suspend Defendants' deadlines to respond to the complaint,
 6 and instead file a status report on January 18, 2023.

7 Since then, Plaintiffs filed a motion on December 19, 2022 to consolidate the 11 related
 8 cases then pending in the Western District of Washington.² *Navarro v. RealPage, Inc., et al.*,
 9 No. 2:22-cv-01552-RSL (W.D. Wash.) ("*Navarro*") Dkt. 67. The Parties completed briefing on
 10 Plaintiffs' consolidation motion on January 13, 2023.

11 On December 19, 2022, Plaintiffs filed motions for appointment of leadership in the
 12 related cases. *Navarro* Dkt. 64; *Morgan, et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01712
 13 ("*Morgan*") Dkt. 52. On January 10, 2023, the Court entered a minute order in the *Navarro*
 14 case setting a case schedule that is tied to the Court's pending order on the motion to
 15 consolidate. *Navarro* Dkt. 77. On January 13, 2023, the Court appointed Hagens Berman Sobol
 16 Shapiro to serve as interim class counsel on behalf of the proposed nationwide class of student
 17 renters. *Navarro* Dkt. 78. Plaintiffs' motion for appointment of leadership for the proposed
 18 nationwide class of multifamily renters is fully briefed and pending. *Morgan* Dkt. 52, 85, 127.

19 Defendants filed a second petition with the Judicial Panel on Multidistrict Litigation
 20 ("JPML") on January 4, 2023, to transfer all related cases to the Northern District of Texas,
 21 where no case was filed. Responses to Defendants' petition are due on January 31, 2023. All
 22 Plaintiffs that joined the consolidation motion will file a response to Defendants' petition, and
 23 will ask the JPML to transfer all related cases to the Western District of Washington. The next

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25 ² As noted in Plaintiffs' reply in support of consolidation, since the original motion, five additional plaintiffs have
 26 filed separate complaints in the Western District of Washington, four of whom support consolidation. *Boelens v.*
 27 *RealPage, Inc., et al.*, No. 2:22-cv-01802 ("*Boelens*"); *Moore v. The Irvine Company, LLC, et al.*, No. 2:22-cv-
 28 01826 ("*Moore*"); *Yusupov v. RealPage, Inc., et al.*, No. 2:23-cv-00013 ("*Yusupov*"); *Crook v. RealPage, Inc., et al.*, No. 2:23-cv-00054 ("*Crook*"); *Hardie et al v. RealPage, Inc. et al.*, No. 2:23-cv-00059 ("*Hardie*"). Plaintiff
 29 Boelens opposes consolidation as premature—primarily on the basis that there are cases pending in other districts
 30 that would not be subject to the consolidation motion and thus consolidation would be partial.

1 JPML hearing at which the JPML petition may be heard is set for March 30, 2023.

2 The pending consolidation and leadership motions are ripe for resolution by the Court.
 3 Furthermore, developments since the filing of the leadership and consolidation motions
 4 illustrate that it would significantly aid the parties, the Court, and the JPML if the Court would
 5 grant the pending consolidation motion and appoint interim class counsel for the multifamily
 6 class proposed in the leadership motion.

7 First, there are significant scheduling efficiencies for the parties and the Court in
 8 granting the consolidation motion in light of the progress of the related cases. Granting the
 9 consolidation motion would ensure that the student and multifamily housing matters proceed on
 10 the same schedule for briefing and discovery. In the event of consolidation, Plaintiffs anticipate
 11 that the parties will coordinate on matters such as initial discovery and motion to dismiss
 12 briefing if the two matters are set for the same schedule.

13 Second, a decision on the motion would benefit the JPML. One factor the JPML will
 14 consider in determining the most appropriate jurisdiction for centralization is whether cases
 15 have advanced in a particular jurisdiction. *See, e.g., In re Smith & Nephew BHR & R3 Hip*
Implant Prod. Liab. Litig., 249 F. Supp. 3d 1348, 1352 (U.S. Jud. Pan. Mult. Lit. 2017)
 16 (transferee district presiding over “one of the most procedurally-advanced actions”); *In re:*
 17 *AndroGel Prod. Liab. Litig.*, 24 F. Supp. 3d 1378, 1380 (U.S. Jud. Pan. Mult. Lit. 2014)
 18 (transferee court “has already taken initial steps to organize litigation”); *In re Pet Food Prod.*
Liab. Litig., 499 F. Supp. 2d 1346, 1347 (J.P.M.L. 2007) (“pretrial proceedings are advancing
 20 well” in transferee district); *In re Republic Nat’l-Realty Equities Sec. Litig.*, 382 F. Supp. 1403,
 21 1406 (J.P.M.L. 1974) (cases in transferee district “proceeding expeditiously”). While this Court
 22 has already advanced the cases significantly, granting the pending consolidation and leadership
 23 motions would allow Plaintiffs and Defendants to move the matters in this District forward
 24 with efficiency and coordination. If and when the JPML decides to transfer the other cases to
 25 this District, those cases and plaintiffs would be folded in to the consolidated action without
 26 disrupting or delaying efficient and coordinated progress of this litigation. Even if the JPML

1 transfers the cases to a different jurisdiction, the related actions pending in this District would
 2 be remanded back to this District for trial, following pretrial proceedings in the transferee court.

3 Third, if the Court grants the consolidation motion, the Plaintiffs in the consolidated
 4 cases would likely be able to file a single, consolidated complaint for the multifamily case
 5 before the JPML panel hears the pending motion to transfer on March 30, 2023. It would be
 6 beneficial for the JPML to review the scope and detail of an amended consolidated complaint,
 7 as it would further inform in which jurisdiction pretrial proceedings should occur.

8 Fourth, there are numerous, ongoing procedural and substantive issues that Plaintiffs
 9 anticipate the parties having to navigate over the next several months before the JPML will
 10 have a chance to address Defendants' petition. These include matters such as the issuance of
 11 evidence preservation letters, the potential commencement of certain discovery tasks, including
 12 negotiating standing protective orders for confidential documents, negotiating protocols for the
 13 production of electronically stored information, and serving requests for production and
 14 negotiating the scope of document productions, and commencing initial discovery negotiations
 15 with the defendant in the *Armas* complaint that filed an answer to the Plaintiffs' complaint.
 16 Plaintiffs think that appointment of leadership would be greatly beneficial in ensuring that these
 17 tasks are promptly performed on behalf of a nationwide class of Plaintiffs. Furthermore, those
 18 tasks must be done regardless of where the cases may ultimately go, and so there is no reason
 19 to delay. It would be inefficient for the parties to defer those tasks until the JPML hears
 20 Defendants' petition at the end of March, and potentially prejudicial to Plaintiffs' claims, in the
 21 event that relevant evidence is lost or destroyed because preservation efforts were delayed.
 22 Further, regardless of preservation efforts, witness memories are lost or fade with the passage
 23 of time. Unnecessary delay is prejudicial.

24 Fifth, counsel for other plaintiffs have now had multiple opportunities to be heard on
 25 the pending motions. Indeed, the same counsel for certain plaintiff cases pending in other
 26 jurisdictions that had previously filed a response to the leadership motion have now filed a
 27 motion to intervene in order to oppose leadership and consolidation, *Navarro* Dkt. 80. Plaintiffs

1 will respond expeditiously to that motion. The motion to intervene merely repeats the same
 2 meritless arguments the same counsel made in their prior response to the leadership and
 3 consolidation motions. As the Court previously recognized, the motions for consolidation and
 4 leadership are “currently before the Court” through motions that followed the briefing
 5 schedules set by the local rules. *Navarro*, Dkt. 78. The exact same set of counsel were on notice
 6 of the motion—and indeed filed a response—but chose not to oppose the motions at that time.³
 7 On this second go-around, these counsel *still* make no substantive arguments on leadership in
 8 their motion.⁴ They propose no alternative leadership structure of their own, provide no
 9 evidence of their own qualifications, and make no attempt to dispute any of the substantive
 10 arguments that Plaintiffs have set forth in support of their proposed leadership structure.
 11 Plaintiffs have filed a leadership motion and litigated it on the merits. Counsel for other sets of
 12 plaintiffs have now had multiple chances to state their position, but declined to do so. The
 13 leadership and consolidation motions remain before the Court and are ripe for resolution.

14 Therefore, Plaintiffs respectfully submit that the Court should grant the pending
 15 consolidation motion and appoint leadership for the nationwide class of multifamily renters, so
 16 that the cases may proceed efficiently on the same schedule. *Navarro*, Dkt. 77.

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 18 **Defendants’ Position.** The above-captioned action is one of 28 related actions
 19 (collectively, the “Related Actions”), including 16 pending in this District and 12 actions pending
 20 in other districts, including the Western District of Texas, the District of Massachusetts, the
 21 District of Colorado, the District of Columbia, the Middle District of Tennessee, the District of

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 26 ³ The exact same set of four law firms signed both the response to the leadership motion and the motion to
 27 intervene. *See Navarro* Dkt. 70, 80.

⁴ The motion to intervene also largely mirrors Defendants’ arguments against consolidation, and has already been
 addressed by Plaintiffs’ reply in support of consolidation. *Navarro* Dkt. 79.

1 Arizona, and the Southern District of Florida.⁵ Although several Related Actions, including the
 2 above-captioned action, were initially filed outside the Western District of Washington before
 3 being voluntarily dismissed and refiled in this District, it is apparent that most of the 12 Related
 4 Actions pending outside the Western District of Washington will not be voluntarily dismissed
 5 and refiled in this District. As Plaintiffs admitted, counsel in those 12 Related Actions have
 6 “rejected efforts to coordinate” with Plaintiffs. *Morgan et al. v. RealPage, Inc. et al.*, No. 2:22-
 7 cv-01712 (W.D. Wash.), ECF No. 127 at 4. Accordingly, on January 4, 2023, defendants named
 8 in the Related Actions, including many Defendants, filed a motion under 28 U.S.C. § 1407 before
 9 the U.S. Judicial Panel on Multidistrict Litigation (the “JPML”) to centralize the Related Actions
 10 in the Northern District of Texas. *See In re: RealPage, Inc., Rental Software Antitrust Litig.*,
 11 MDL No. 3071, ECF No. 1. Defendants believe that judicial and party efficiency is best served
 12 by allowing the JPML to first determine the district in which all 28 Related Actions will be
 13 consolidated before there is any further activity in the Related Actions. Counsel in the Related
 14 Actions outside the Western District of Washington agree. *See Boelens v. RealPage, Inc. et al.*,
 15 No. 2:22-cv-01802 (W.D. Wash.), ECF No. 30 at 2 (“[T]he Judicial Panel on Multidistrict
 16 Litigation is best suited to determine the appropriate transferee venue,” which “will be best
 17 placed to determine how best to account for the significant regional issues at play across the

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 5 The 28 Related Actions are: (1) *Navarro v. RealPage, Inc., et al.*, No. 2:22-cv-01552-RSL (W.D. Wash.); (2) *Alvarez et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01617-RSL (W.D. Wash.); (3) *Cherry et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01618 (W.D. Wash.); (4) *Morgan et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01712 (W.D. Wash.); (5) *Armas et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01726 (W.D. Wash.); (6) *Johnson v. RealPage, Inc. et al.*, No. 2:22-cv-01734 (W.D. Wash.); (7) *Silverman et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01740 (W.D. Wash.); (8) *Bohn et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01743 (W.D. Wash.); (9) *Pham et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01744 (W.D. Wash.); (10) *Weaver v. RealPage, Inc. et al.*, No. 1:22-cv-03224 (D. Colo.); (11) *Godfrey v. RealPage, Inc. et al.*, No. 2:22-cv-01759 (W.D. Wash.); (12) *Zhovmiruk v. RealPage, Inc. et al.*, No. 2:22-cv-01779 (W.D. Wash.); (13) *White v. RealPage, Inc. et al.*, No. 1:22-cv-12134 (D. Mass.); (14) *Vincin et al. v. RealPage, Inc. et al.*, No. 1:22-cv-01329 (W.D. Tex.); (15) *Carter v. RealPage, Inc. et al.*, No. 1:22-cv-1332 (W.D. Tex.); (16) *Boelens v. RealPage, Inc. et al.*, No. 2:22-cv-01802 (W.D. Wash.); (17) *Moore v. The Irvine Company, LLC et al.*, No. 2:22-cv-01826 (W.D. Wash.); (18) *Kramer v. RealPage, Inc. et al.*, No. 1:22-cv-03835 (D.D.C.); (19) *Precht v. RealPage, Inc. et al.*, No. 1:22-cv-12230 (D. Mass.); (20) *Watters v. RealPage, Inc. et al.*, No. 3:22-cv-01082 (M.D. Tenn.); (21) *Mackie v. RealPage, Inc. et al.*, No. 1:23-cv-00011 (D. Colo.); (22) *Yusupov v. RealPage, Inc. et al.*, No. 2:23-cv-00013 (W.D. Wash.); (23) *Bertlshofer v. RealPage, Inc. et al.*, No. 2:23-cv-00018 (D. Ariz.); (24) *Enders v. RealPage, Inc. et al.*, No. 1:23-cv-00055 (D. Colo.); (25) *Hardie et al. v. RealPage, Inc. et al.*, No. 2:23-cv-00059 (W.D. Wash.); (26) *Crook v. RealPage, Inc. et al.*, No. 2:23-cv-00054 (W.D. Wash.); (27) *Parker et al. v. RealPage, Inc. et al.*, No. 1:23-cv-20160 (S.D. Fla.); and (28) *Corradino et al. v. RealPage, Inc. et al.*, No. 1:23-cv-20165 (S.D. Fla.).

1 different related cases.”). For its part, the JPML set a briefing schedule that calls for the motion
 2 to be fully briefed by February 7, 2023. *See In re: RealPage, Inc., Rental Software Antitrust*
 3 *Litig.*, MDL No. 3071, ECF No. 4.

4 Consolidating 11 Related Actions when the JPML will determine in the near future
 5 whether and where all 28 Related Actions should be consolidated would be inefficient and, at
 6 best, premature. It would be highly inefficient to proceed piecemeal in a subset of the Related
 7 Actions when the JPML will decide where all of them will proceed. Plaintiffs’ effort to
 8 consolidate 11 Related Actions is particularly inefficient given that Plaintiffs’ motion necessarily
 9 does not reach the many defendants who remain unserved; as noted, six of the 11 cases remain
 10 completely unserved. This is not a mere technicality because there are multiple defendants who
 11 have not been served in *any* of the cases that Plaintiffs seek to consolidate and, therefore, have
 12 no notice of these proceedings, let alone the consolidation motion. Given these procedural
 13 dynamics, Plaintiffs’ consolidation motion seeks to put the cart before the horse and is, at best,
 14 premature. This is particularly true because Plaintiffs are urging that, if consolidation occurs, the
 15 briefing and discovery schedule in *Navarro* should apply to all of the consolidated cases, even
 16 though a consolidated proceeding would involve many more plaintiffs and defendants, and a
 17 number of additional potential alleged geographic markets. Defendants respectfully refer the
 18 Court to their brief in opposition to Plaintiffs’ motion for why else Plaintiffs’ motion is
 19 premature. *See Navarro v. RealPage, Inc. et al.*, No. 2:22-cv-01552 (W.D. Wash.), ECF No. 76
 20 (Plaintiffs’ proposed consolidation will create inefficiencies that include the risk that the Court
 21 may need to unwind or revise its ruling on Plaintiffs’ consolidation motion depending on how
 22 the JPML rules on Defendants’ § 1407 motion); *see also Van Horn v. Korean Air Lines Co., Ltd.*,
 23 2007 WL 9775632, at *1 (W.D. Wash. Oct. 31, 2007) (Robart, J.) (striking motion to consolidate
 24 cases and granting motion to stay pending resolution of section 1407 motion where “cases were
 25 filed less than 90 days ago”); *Nue LLC v. Oregon Mutual Ins. Co.*, 2020 WL 7016052, at *2
 26 (W.D. Wash. July 1, 2020) (Lasnik, J.) (holding that “principles of judicial economy weigh in
 27 favor of granting a stay” pending resolution of section 1407 motion); *Short v. Hyundai Motor*

1 *Am. Inc.*, 2019 WL 3067251, at *3 (W.D. Wash. July 12, 2019) (Robart, J.) (staying case pending
 2 resolution of section 1407 motion because “requiring parties to comply with their Rule 26(f) and
 3 initial disclosures obligations before the JPML decision would be prejudicial” (internal quotation
 4 mark omitted)).

5 Similarly, to the extent the Court entered a case schedule in *Navarro v. RealPage, Inc. et*
 6 *al.*, 2:22-cv-01552 (W.D. Wash.), on the perception that *Navarro* is different because it concerns
 7 a putative class of student housing lessees (versus all residential multifamily housing),
 8 Defendants respectfully submit that pre-trial proceedings in *Navarro* will overlap with the other
 9 27 Related Actions. As Plaintiffs themselves concede, “there will likely be legal questions and
 10 certain factual issues that overlap between *Navarro* and the *Alvarez*, *Cherry*, and *Morgan*
 11 actions.” *Navarro v. RealPage, Inc. et al.*, 2:22-cv-01552 (W.D. Wash.), ECF No. 2 at 3. There
 12 are accordingly judicial and party efficiencies gained from *Navarro* proceeding collectively with
 13 the other Related Actions once the JPML makes its decision.

14 Plaintiffs make a number of efficiency-related arguments as though the Related Actions
 15 in Washington are proceeding in a vacuum. As noted above, the many actions pending in other
 16 jurisdictions would not be affected by the consolidation motion currently before the Court nor
 17 would they be subject to any schedule or discovery obligations ordered by the Court. Defendants,
 18 who must contend with these cases outside of the District, thus obtain no efficiency benefits
 19 because they will remain subject to potentially differing obligations and schedules in these other
 20 jurisdictions until the JPML rules. In fact, all of Plaintiffs’ efficiency arguments best apply to
 21 ***all parties***—not just the Plaintiffs before the Court but also other plaintiffs and Defendants—if
 22 the Court were to wait for the JPML to make its decision so there is a single schedule, a single
 23 protective order, a single set of discovery obligations, etc.⁶ Relatedly, Plaintiffs argue that it is
 24 important for the multifamily cases to proceed on the same track as *Navarro* but there can be no
 25 disputing that the most efficient way to ensure this result is to wait for the JPML’s

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 27 ⁶ Plaintiffs’ claim that document preservation issues will be more efficient if the Court grants their consolidation motion does not follow—Defendants are aware of their preservation obligations, are complying with them, and consolidation has no impact on them.

1 determination—any other course risks wasted time and resources.⁷

2 Plaintiffs also claim that the JPML would benefit from seeing a “consolidated complaint
 3 led by Plaintiff counsel who were the first to file the cases, and have done significant investigative
 4 work in developing the claims.” But the parties already have acknowledged that the complaints
 5 in the various Related Actions involve overlapping claims, factual allegations, and parties; in this
 6 context, Plaintiffs do not explain how the JPML would benefit from seeing a consolidated
 7 complaint derived from only a subset of the pleadings that ignores the specific allegations in
 8 nearly a dozen cases.⁸ Furthermore, there is nothing stopping Plaintiffs from submitting such a
 9 pleading or making whatever arguments they wish about their “investigative work” to the JPML.
 10 The Court does not need to grant Plaintiffs’ consolidation motion for them to do any of this.

11 In sum, Plaintiffs identify no reason why this Court should rush to rule now, instead of
 12 deferring until the JPML has time to do its work. By contrast, waiting until the JPML issues an
 13 order will generate significant efficiencies. Thus, Defendants respectfully request that the Court
 14 preserve the existing suspension of the deadline for Defendants to respond to the Complaint in
 15 all of the actions before it, and direct the parties to file a status report ten days after the JPML
 16 rules on the pending Section 1407 motion.

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23 ⁷ Plaintiffs also note that one defendant—B/T Washington, LLC—filed an answer in one Related Action. *See Armas et al. v. RealPage, Inc. et al.*, No. 2:22-cv-01726 (W.D. Wash.), ECF No. 65. B/T Washington, LLC, a local family-owned property manager, which was unaware of being a defendant in any other Related Action, filed its answer before it was aware that multiple Related Actions were pending in this and other districts, or that a consolidation motion had been filed with the JPML. B/T Washington, LLC agrees with Defendants that *Armas* and all other Related Actions should proceed on the same schedule, after the JPML rules. Indeed, it would make little sense—and be highly inefficient—for *Armas* to move forward for only one Defendant.

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 26 ⁸ Nor do Plaintiffs articulate how a consolidated complaint that covers only a subset of cases achieves any
 27 efficiencies when a new consolidated complaint will need to be drafted and filed when all of the cases are
 consolidated together. Again, Plaintiffs act as if theirs are the only cases with which Defendants must contend.

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED this 18th day of January, 2023.

/s/ Heidi B. Bradley

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